4102

SUPREME COURT OF THE UNITED STATES.

No. 89.

TAYLOR BROWN, PL'FF IN ER.,

vs.

LEROY M. WILEY, HUGH R. BANKS, WILLIAM G. LANE, HENRY VAN DERZEE, AND EDWARD H. LANE, MERCHANTS, TRADING UNDER THE NAME AND STYLE OF L. M. WILEY & CO.

IN ERROR TO THE DISTRICT COURT OF THE U. S. FOR THE DISTRICT OF TEXAS.

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UNITED STATES OF AMERICA,
District of Texas.

At a term of the United States district court, begun and holden at Tyler, within the county of Smith, and State of Texas, on the seventh day of April, A. D. 1856, before the Hon. John C. Watrous, judge thereof, the following cause came on for trial, viz:

L. M. WILEY & Co., Plaintiffs,
vs.
TAYLOR BROWN, Defendant. } No. 121.

Original petition.—Filed February 9, 1855.

UNITED STATES OF AMERICA,
District of Texas.

To the Hon. John C. Watrous, judge of the district court of United States, sitting at Tyler, in and for said district:

The petition of Leroy M. Wiley, Hugh R. Banks, William G. Lane, Henry Van Derzee, and Edward H. Lane, who are citizens of the State of New York, and resident at the city of New York, in said State, and who are hereinafter styled the plaintiffs, respectfully showeth unto your honor, that Taylor Brown, who is a citizen of the State of Texas, and the county of Rusk, in said State, and who is hereinafter styled the defendant, is justly indebted to the plaintiffs in the sum of two thousand three hundred and fifty-nine and 26-100 dollars, exclusive of interest, as will appear in the following manner, and in the following account: for that, on the 23d day of the month of March, in the year of our Lord one thousand eight hundred and fifty-four, in the town of Shreveport, in the State of Louisiana, the said defendant, by and under the name and signature of Taylor Brown, by his agent, W. L. McMurray, whose christian name is nnknown to plaintiffs, and who is a citizen of the State of Texas, and county of Rnsk, made and delivered his certain "bill of exchange," commonly called a "draft," to the plaintiffs, dated on the day and year aforesaid, wherein the defendant is the drawer, the plaintiffs are the payees, and Messrs. Campbell & Strong, merchants, at the city of New Orleans, in State of Louisiana, are the drawees; by which said draft the defendant engaged and promised to plaintiffs, that the said drawees, to wit, Campbell & Strong, merchants, trading under the style and firm of "Campbell & Strong," at the city of New Orleans, in the State of Louisiana, would, on or before the first day of May, in the year of our Lord one thousand eight hundred and fifty-four, pay to the order

of plaintiffs, then trading under the name and firm of L. M. Wiley & Co., the sum of twenty-three hundred and fifty-nine 26-100 dollars, for value received.

Plaintiffs further show unto your honor, that the said draft was duly presented at the place where payable, acceptance demanded of the drawers, but refused; whereon it was duly and regularly protested for non-acceptance of the said draft; wherefore plaintiffs pray that the said defendant may be cited before your honorable court, and be made to pay the plaintiffs the said moneys, together with legal interest from the time the aforesaid sum became due, which, according to the laws of Louisiana, is per cent., and also costs of protest, which was two dollars and fifty cents; and to render to plaintiffs such other and further general relief as plaintiffs may be entitled unto; and, as in duty bound, will ever pray.

SELMAN & HUBBARD,
Att'ys for Plffs.

(Endorsement on petition.) No. 121. U. S. Dist. Court. L. M. Wiley & Co. vs. Taylor Brown. Petition. Filed February 9, 1855. Wm. Davenport, clerk.

Original citation.—Issued February 9, 1855.

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Taylor Brown, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Tyler, on the first Monday of April next, to answer the petition and complaint of Leroy M. Wiley, Hugh R. Banks, William G. Lane, Henry Van Derzeer, and Edward H. Lane, against Taylor Brown, in an action of debt for the sum of two thousand three hundred and fifty-nine 26-100 dollars, besides interest, cost of suit, &c., &c., of which you will serve the said defendant, Taylor Brown, with a copy of this summons, with the accompanying copy of said petition, which will more fully show the nature of the suit.

Witness the Hon. John C. Watrous, judge of said court, and the [L. S.] seal of said court, at the city of Tyler, this 9th day of February, A. D. 1855, and the seventy-ninth year of the independence of the United States of America.

WM. DAVENPORT, *Clerk*

(Endorsement on citation.) No. 121. L. M. Wiley & Co. v. Taylor Brown. Summons. Issued February 9, 1855. Wm.

Davenport, clerk. Came to hand February 9, 1855. Executed by delivering a copy of this summons, and a certified copy of petition, to Taylor Brown, in Rusk county, about 35 miles from Tyler, on the 15th day of March, 1855. Ben. McCulloch, U. S. marshal, by the deputy, W. H. Carter.

Motion for security for costs.—Filed April 7, 1855.

L. M. Wiley & Co.
vs.
Taylor Brown.

U. S. district court, April term, 1855.

And now comes the defendant in the above-entitled cause, and moves the court to grant him a rule requiring plaintiffs to give a bond payable to defendant as security for costs.

BAGLEY, GOODMAN & EARLE,
Att'ys for Deft.

(Endorsement on motion.) 121. L. M. Wiley & Co. vs. Taylor Brown. Motion security for cost. Filed April 7, 1855. Wm. Davenport, clerk.

Demurrer.—Filed April 10, 1855.

L. M. Wiley & Co.
vs.
Taylor Brown.

In the district court of the United States, at Tyler, for the district of Texas, April term, 1855.

And the said Taylor Brown, the defendant, by his attorneys, comes and defends the wrong and injury when, &c., and says, that the said declaration or petition of the plaintiff, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him, the said defendant, and he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore, by reason of the insufficiency of said declaration or petition in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him.

GOODMAN & EARLE,
Deft.'s Attys.

(Endorsed as follows:) 121. Taylor Brown ads. L. M. Wiley & Co. Demurrer. Filed April 10, 1855. Wm. Davenport, clerk.

Notice to take testimony.

U. S. DISTRICT COURT,
District of Texas, at Tyler.

L. M. WILEY & Co.
vs.
TAYLOR BROWN. } No. 121.

To Messrs. L. M. Wiley & Co., or B. T. Selman, their attorney:

SIR: You are hereby notified that Edwin Campbell will be examined de bene esse before me, at my office, in the town of Henderson, in the county of Rusk, on Thursday, the 13th day of September, 1855, at 10 o'clock, a. m., as a witness for the defendant, according to the act of Congress in such case made and provided; at which time and place you are entitled by law to be present, and put interrogatories to the said witness. Given under my hand this 6th day of September, 1855.

W. H. ESTELL,
Commissioner.

(Endorsed as follows:) No. 121. L. M. Wiley & Co. vs. Taylor Brown. Notice to take testimony. Rec'd September 8, 1855, and executed on the same day and same year by delivering to B. T. Selman a copy of this notice in Tyler.

BEN. McCULLOCH,
U. S. Marshal.
By JAS. F. WALKER,
Deputy.

Commission.

UNITED STATES OF AMERICA.

United States district court for the State of Texas, sitting at Tyler, in said State—

To any judge or clerk of a court of record, within the State of Louisiana, and parish of Orleans, or any notary public in said State, or to any commissioner appointed by the Governor of the State of Texas, to take depositions, acknowledgments of deeds, &c., in the State of Louisiana, to be used in the State of Texas, we hereby require you to cause Edwin Campbell, Paschal N. Strong, and Theodore Guyal to come before you at such time and place as you may appoint, and that you then and there carefully and fully examine them upon their oaths, first to be taken before you, touching the annexed interrogatories and cross-interrogatories.

1st. That you reduce the answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to by said witness.

2d. That you certify, under your hand and seal of office, that said answers were sworn to and subscribed before you.

3d. That you seal up in an envelope the answers so taken, together with the annexed interrogatories, and this commission, with your name across the seal.

4th. That you *endorsed* on the envelope the names of the parties to this suit, and the names of said witnesses.

5th. That you direct the package to the court of the United States district court for the State of Texas, sitting at Tyler—Tyler, Texas.

6th. That if the said package is sent by mail, the postmaster, or his deputy, shall endorse thereon, that he received it from your hands, and sign his name thereto; which answers and depositions, when taken, are to be used in evidence in the trial of a suit now pending before the United States district court of Texas, wherein L. M. Wiley & Co. are plaintiffs, and Taylor Brown is defendant. Herein fail not to make due return to our said court on or before the first Monday in April next.

Test: WM. DAVENPORT,
Clerk of our said Court.

Given under my hand and seal of office, at Tyler, this 26th day
[L. S.] of February, A. D. 1856.

WM. DAVENPORT, *Clerk.*

Interrogatories to Guyal, Campbell, and Strong.—Filed February 13, 1856.

UNITED STATES OF AMERICA,
District Court for the District of Texas, at Tyler.

L. M. WILEY & Co.
vs.
TAYLOR BROWN.

Interrogatories to be propounded to Theodore Guyal, Edwin Campbell, and Paschal N. Strong, witnesses for plffs., who reside in the city of New Orleans, and State of Louisiana.

1st. Do you know the parties above named?

2d. Do you, or either of you, know anything of a draft drawn by Taylor (Brown,) the defendant, by his agent, W. L. McMurray, dated 23d day of March, A. D. 1854, and payable on the first day of May, A. D. 1855, to L. M. Wiley & Co., for twenty-three hundred and fifty-nine dollars and 26-100? If yea, on whom was the said draft drawn?

3d. You will please state whether the said draft was presented to the drawers for acceptance or payment. If so, state what was done with it.

4th. If you answer that the draft was protested for any cause,

state whether notice was given to any one of the protest. If so, to whom was the notice given; and state particularly in what way notice was given? Give all the particulars. If mailed, state how long after protest.

5th. If the draft was protested, Campbell & Strong, or either, will please state whether they had funds in hand at that time belonging to Taylor Brown, and they will state their reasons in full for not accepting said draft.

6th. Mr. Theodore Guyal will please state how it was he came to have anything to do with said draft.

L. M. WILEY & CO.,
Pr. attys. SELMAN & HUBBARD.

Notice.

To Mr. Taylor Brown, deft., or his attorney of record, Nathan Bagly:

Take notice, that after five days from the service of this notice, and a copy of the foregoing interrogatories, we will apply to the clerk of the district court of the United States, at his office, in the town of Tyler, for a commission, directed to the proper authority, to take the answers to said interrogatories of Edwin Campbell, Theodore Guyal, and Paschal N. Strong, witnesses for plffs., and who reside in the city of New Orleans, and State of Louisiana. You may cross the same if you think proper.

L. M. WILEY & CO.,
Pr. SELMAN & HUBBARD,
Attorneys.

Certificate of Clerk.

I, William Davenport, clerk of the United States district court in and for the district of Texas, do certify the above and foregoing to be a true copy of the original, which is filed in my office.

Given under my hand and seal of court on this, the 13th day of February, 1856. [L. S.]

WM. DAVENPORT, *Clerk.*

Cross-interrogatories propounded by defendant to Wm. Campbell, one of plaintiff's witnesses.

Cross-interrogatory 1st. Was said draft, spoken of by plaintiffs, due at the time it was presented? Was it due on the first day of May, 1855; or when was it due?

Cross-interrogatory 2d. If the plffs. had notice until the draft was due, *woul* not have accepted it for deft.

Cross-interrogatory 3d. Was said draft presented at the time agreed upon, or was it presented before that time? If the plffs.

had waited until a former draft drawn by defendant upon the firm of Campbell & Strong, in favor of plffs., had been provided for, would you have accepted the one now in suit? If it had been presented at the time it fell due, and was payable, state what you would have done under such circumstances.

Cross-interrogatory 4th. Was satisfactory arrangements made to you for the payment of the first, drawn by the deft. on yon, in favor of the plaintiffs, at the time the present draft fell due? If so, state all you know about the matter that will benefit the defendant.

N. G. BAGLY,
Pro Deft.

I, William Davenport, clerk of the United States district court in and for the district of Texas, at Tyler, do certify the above and foregoing is a correct copy of the original, which is filed in my office.

Given under my hand and the seal of the court on this, the 24th [L. S.] of February, 1856.

WM. DAVENPORT, *Clerk.*

Depositions of Theodore Guyal and Paschal N. Strong, taken by me, William Shannon, a commissioner of the State of Texas, in and for the city of New Orleans, State of Louisiana, duly commissioned and qualified, on the thirteenth day of March, A. D. 1856, at my office in the said city, to be used on the part of the plaintiffs, in the trial of a certain suit now pending in the United States district court of Texas, (now sitting at Tyler,) wherein L. M. Wiley & Co. are plaintiffs, and Taylor Brown is defendant, pursuant to the annexed commission to me directed, and issuing out of said court.

The said Theodore Guyal, being first duly cautioned and solemnly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to certain interrogatories hereto annexed, doth depose and say as follows, to wit:

Answer to 1st interrogatory. I do not.

Answer to 2d interrogatory. A draft for $\$2{,}359\frac{26}{100}$, drawn by Taylor Brown by W. L. McMurray, in favor of L. M. Wiley & Co., on Campbell & Strong, dated Shreveport, March 23, 1854, and made payable on or before the first day of May, 1855, was placed in my hands by Messrs. L. M. Wiley & Co. on the 10th June, 1854, to be presented for acceptance, and in case of refusal, to be protested.

Answer to 3d interrogatory. The said draft was presented to the drawers, Campbell & Strong, and acceptance thereof was demanded from them by my deputy, W. G. Latham, to which demand Mr. Campbell answered that they would not accept the same, the previous drafts accepted by them for the same parties not being

yet paid. Whereupon I protested the said draft in due form of law for non-acceptance on the said 10th June, 1854.

Answer to 4th interrogatory. Notice of said protest was given to the drawer of said draft, Taylor Brown, by addressing a letter to him at Henderson, Rusk county, Texas, which letter was dated on the same day of said protest, and particularly described the said draft, and it was deposited in the post office, in the city of New Orleans, on the same day of the protest, to wit, the 10th June, 1854.

Answer to 5th interrogatory. This interrogatory was answered by my answer to the second interrogatory.

THEO. GUYAL.

Then also appeared Paschal N. Strong, who being in like manner by me, commissioner, duly cautioned and solemnly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to certain interrogatories and cross-interrogatories hereto annexed, doth depose and say as follows, to wit:

Answer to 1st interrogatory. I know the parties by reputation.

Answer to 2d interrogatory. The draft herein referred to was drawn on the firm of Campbell & Strong.

Answer to 3d interrogatory. I do not know whether the draft herein referred to was presented to the drawer or not, but I do know that it was presented to the drawers for acceptance, and the same refused, after which it was protested.

Answer to 4th interrogatory. I know nothing relative to this interrogatory.

Answer to 5th interrogatory. The draft was protested for non-acceptance on the 10th of June, 1854. Campbell & Strong had no funds of the drawer of said draft in their hands at that time. The reason why Campbell & Strong refused acceptance of the said draft, was because they had previously accepted and paid a draft of Mr. Brown's, in favor of L. M. Wiley & Co., for near the same amount as this one; and it was understood by Mr. Brown, as well as the holders of the draft, that as soon as Mr. Brown had provided for what Campbell & Strong had already accepted, that they would accept the one in question. Further deponent saith not, and gives his name.

P. N. STRONG.

Answers of P. N. Strong to cross-interrogatories propounded to Edwin Campbell, the said Campbell not being in the city at present.

Answer to 1st cross-interrogatory. The draft herein referred to was due about the 1st of May, 1855. It was not due when presented for acceptance.

Answer to 2d cross-interrogatory. I do not understand the meaning of this interrogatory in its present shape, and am therefore unable to answer it.

Answer to 3d cross-interrogatory. Said draft was not presented at the time agreed upon—it was presented before that time. If the plaintiff had waited until the former draft of Mr. Brown on the firm of Campbell and Strong had been provided for, it would have been accepted by that firm, and consequently would have been paid by them when due, whether in funds of Mr. Brown or not. By reference to Mr. Brown's accounts, I perceive that his previous draft was provided for early in July; consequently, if it had been presented for acceptance in July, it would have been accepted by Campbell & Strong on or about that time.

Answer to 4th cross-interrogatory. I have answered this in my answer to the third cross-interrogatory; but I will add, that at the time the two drafts were first presented for acceptance, say about 1st of March, 1854, W. E. Campbell stated to the holders, in my hearing, that the firm would accept the one falling due April 18th, 1854, for $2,350, provided they would hold over the other draft without acceptance until such time as Mr. Brown had provided for the one due in April, 1854, and that as soon as it was provided for, his firm would then accept the other one. He stated, also, that if the holders of the drafts, after they had obtained Campbell & Strong's acceptance of the draft due in April, 1854, meant to protest the other, falling due in May, 1855, that he would not accept either of them. This arrangement being assented to by the holders, the draft due in April, 1854, was accordingly accepted and paid by Campbell & Strong, without funds on hand of the drawer's, at its maturity, although the shipments of cotton afterwards made by Mr. Brown from time to time reimbursed the acceptors, and early in July it had been finally provided for. Further deponent saith not, and signs his name. P. N. STRONG.

Certificate of Commissioner.

STATE OF LOUISIANA,
City of New Orleans.

I, William Shannon, a commissioner of the State of Texas in and for the city of New Orleans, State of Louisiana, do hereby certify that Theodore Guyal and Paschal N. Strong were by me severally sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories hereto annexed; that the foregoing depositions were by me reduced to writing, sworn to and subscribed by said witnesses in my presence, and taken at the time and place set forth in the caption hereof.

In faith whereof, I hereunto sign my name, and affix an impress of my official seal, at New Orleans, this thirteenth day of March, in the year one thousand eight hundred and fifty-six.

WILLIAM SHANNON, [L. S.]
Comm'r.

Fees $12, p'd by pl'ff.

Affidavit to take testimony.

U. S. DISTRICT COURT,
District of Texas, at Tyler.

L. M. WILEY & Co.
vs.
TAYLOR BROWN. } No. 121.

Taylor Brown, of Rusk county, State of Texas, being sworn, says, that he is defendant in the above-entitled cause; that he is advised by his counsel and verily believes that the testimony of Edwin Campbell, one of the partners of the firm of Campbell & Strong, commission merchants, residing and doing business in the city and parish of New Orleans, in the State of Louisiana, is material and necessary for this deponent in the defence of said cause; that the said Edwin Campbell lives in the said city of New Orleans, more than one hundred miles from Tyler, where the court at which this deponent expects said cause will be tried is appointed by law to be held. And this deponent further says, that he is informed and believes that L. M. Wiley & Co., the above-named plaintiffs, reside in the State, city, and county of New York, about one thousand miles distant from the town of Henderson, State of Texas, the place where the examination of said witness is expected to be taken; and that he is also informed and believes B. T. Selman, the attorney of the said L. M. Wiley & Co., resides at the town of Tyler, about forty miles distant from Henderson aforesaid.

TAYLOR BROWN.

Sworn to and subscribed before me, the 6th day of September, A. D. 1855.

W. H. ESTILL,
U. S. Commissioner.

Order.

U. S. DISTRICT COURT,
District of Texas, at Tyler.

L. M. WILEY & Co.,
vs.
TAYLOR BROWN. } No. 121.

Order to take testimony.

Let Edwin Campbell, the witness named in the within affidavit, be examined de bene esse, before me, accordingly, at my office, in the town of Henderson, county of Rusk, on Thursday, the 13th day of September, A. D. 1855, at ten o'clock a. m. of said day,

and let three days' notice be given to B. T. Selman, attorney for the plaintiffs, of such examination.

Given under my hand, this the 6th day of September, A. D. 1855.

W. H. ESTILL,
Commissioner.

Deposition.

L. M. WILEY & Co.
vs.
TAYLOR BROWN. } No. 121.

Be it remembered that on the 6th day of September, one thousand eight hundred and fifty-five, at my office in the town of Henderson, county of Rusk, State of Texas, Taylor Brown personally appeared before me, W. H Estell, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, and made oath that he, the said Taylor Brown, was defendant in a suit then depending in the district court of the United States in and for the district of Texas, wherein L. M. Wiley & Co. were plaintiffs; that the testimony of Edwin Campbell of the city and parish of New Orleans, in the State of Louisiana, was material and necessary for him, the said defendant, in the defence of such suit, and that he, the said Edwin Campbell, lived at the city of New Orleans, in the State of Louisiana, more than one hundred miles from Tyler, where the court at which he, the said defendant, expected the said cause would be tried was appointed by law to be held; that L. M. Wiley & Co., the above-named plaintiffs, resided at the city of New York, about one thousand miles from Tyler aforesaid, and Benjamin T. Selman, their attorney, resided at Tyler, about thirty-five miles from the town of Henderson aforesaid; and that the said Taylor Brown, requested me that the said Edwin Campbell might be examined according to the directions of the act of Congress in such case made and provided. Whereupon, I ordered that the said Edwin Campbell should be examined de bene esse before me, at my office in the town of Henderson, on Thursday, the 13th day of September, 1855, at 10 o'clock a. m., as a witness, and that three days' notice be given to the said Benjamin T. Selman, attorney aforesaid, of such examination, to the end that he might be present, if he should see fit, at the examination, and put interrogatories, and I, having satisfactory proof that such notice had been given the said attorney of the plaintiffs, and N. G. Bagley, attorney for the defendant, appearing before me, at my office in Henderson, on this the 13th day of September, A. D., 1855, I have therefore proceeded with the examination. And the said Edwin Campbell, being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth:

The first interrogatory propounded by the defendant's counsel.

Are you acquainted with the parties?

He saith: He is not personally acquainted with the plaintiffs, L. M. Wiley & Co., but he is personally acquainted with Taylor Brown, the defendant.

Interrogatory second. How long have you known Taylor Brown?

Answer. I have known him some three years.

Interrogatory third. Are you acquainted with Charles Keith?

Answer. He says, he knows a Mr. Keith who represented himself as agent of L. M. Wiley & Co., the plaintiffs.

Interrogatory fourth. Was there a draft presented to your house drawn by Taylor Brown or his agent, in the year 1854; if so, by whom was it presented?

Answer. Probably in the month of March or April, 1854, a draft drawn by Taylor Brown or his agent, W. L. McMurray, on the house of Campbell & Strong for acceptance, in favor of L. M. Wiley & Co., due in May, probably 1854, for about twenty-two hundred dollars, said draft was presented by John R. Marshall & Co.

Interrogatory fifth. Was there any other draft presented that year by the same party, for that or near the same amount, in favor of L. M. Wiley & Co.?

Answer. At the same time the first draft spoken of was presented, there was another draft drawn by the same party in favor of L. M. Wiley & Co., for a similar amount, having twelve months to run from the date of the same, according to my best recollection.

Interrogatory sixth. What disposition did you make of those drafts?

Answer. The first draft, or one of that date, was accepted, the other was not.

Interrogatory seventh. What was the amount of the draft not accepted?

Answer. It was probably about twenty-three hundred dollars.

Interrogatory eighth. Were the above-described drafts all that were presented that year, drawn by the same party and in favor of the same party, for similar amounts?

There were no other drafts presented that year, and I feel confident none were presented for similar amounts between the parties.

Interrogatory ninth. Have you seen Mr. Keith, the gentleman who represents himself as agent of the plaintiffs, since the commencement of this suit, or since April last?

Answer. I have not.

Interrogatory tenth. At the time the drafts of twenty-three hundred dollars, above described, were presented for acceptance, did the defendant, Taylor Brown, have in your possession any funds or effects; if so, what amount?

Answer. None.

Interrogatory eleventh. If you state that the first draft was accepted, what disposition would you have made with the other

draft, provided the plaintiffs had withheld the presentation of it until the one accepted was provided for, or paid by the defendant?

Answer. On the acceptance of the first draft, I told the holder of the second draft, that when the first one was paid by the drawer then the second one would be accepted.

Interrogatory twelfth. Where do you reside?

Answer. In the city of New Orleans, in the State of Louisiana.

Interrogatory thirteenth. Was the first draft spoken of paid by the drawer?

Answer. It has been paid.

Interrogatory fourteenth. When was that draft paid?

Answer. Within two months after its maturity.

The plaintiffs, by their attorney, excepts to the whole of the interrogatories and answers above elicited, as leading, illegal, and irrelevant.

The said plaintiffs, by their attorneys, propound the following cross-interrogatories to the witness:

First X-interrogatory. Who presented the second draft, described in the interrogatories in chief, to the house of Campbell & Strong?

Answer. The draft was presented several times through the house of John R. Marshall & Co.; once by Mr. Babcock of that house.

Second X-interrogatory. Was there any contract or agreement between the house of Campbell & Strong and the drawer of the first draft, that said draft should be accepted upon presentation?

Answer. There was.

Third X-interrogatory. Was there any contract or agreement between you and the said drawer that any bill or draft, drawn by Taylor Brown or his agent, W. L. McMurray, should be accepted by the house of Campbell & Strong upon presentation, subsequent to the drawing of the first draft?

Answer. There was no contract or agreement.

Fourth X-interrogatory. How long after the acceptance of the first draft, spoken of in the interrogatories in chief, before the last presentation of the second draft?

Answer. It was probably two months.

Fifth X-interrogatory. After the first draft was paid, did the defendant have further funds in the hands of Campbell & Strong; if yea, what amount, and were they subject to the payment of the second draft?

Answer He does not recollect.

Sixth X-interrogatory. At the time of protest of second draft, were any previous drafts, drawn by Taylor Brown or W. L. McMurray, his agent, unpaid by the drawer, which said drafts had been accepted by Campbell & Strong?

Answer. There were none except the first draft, mentioned in the examination in chief, accepted by Campbell & Strong, unpaid by the drawer.

Seventh X-interrogatory. Did you say to the holder of the second draft anything in regard to any previous draft or drafts drawn by Taylor Brown being unpaid? Answer. At the time of protest of second draft, I stated to the holder of the draft, that the first draft was unprovided for; but I also stated, that if the holder of the second draft would hold on to it until the first was paid, it would be accepted.

Eighth X-interrogatory. Did you state to the holder of the last draft how long it would be before the first draft would be paid by the drawer? Answer. I stated it could not probably be long, as I learned the cotton was on the way to meet it.

EDWIN CAMPBELL.

The defendant excepts specially to all the interrogatories and the answers, excepting the 7th and 8th, as leading, illegal, and irrelevant.

And I do further certify, that the preceding interrogatories and cross-interrogatories, with the answers thereto, was reduced to writing by me, and that the answers were signed by the witness Edwin Campbell, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof. Given under my hand this the 13th day of September, A. D. 1855.

W. H. ESTILL, *Commissioner.*

Amended petition.—Filed April 4, 1856.

L. M. WILEY & Co.
v.
TAYLOR BROWN. } 121.

In United States district court for district of Texas.

And now comes the plaintiffs by their attorneys, leave of court having been obtained, and amend their petition, and for further cause showeth unto your honor, that the defendant's said draft was protested in due and legal form on the tenth day of the month of June, in the year one thousand eight hundred and fifty-four, and that defendant had legal notice of the said protest. That said draft, before protest of the same, was, at the request of the said L. M. Wiley & Co., presented to Messrs. Campbell & Strong, the drawees, by Theodore Guyal, a notary public in and for the city of and parish of New Orleans, and State of Louisiana, through his deputy, W. G. Latham, and acceptance demanded of said draft, but refused by the said drawees. That defendant, at the time of the presentation of said draft, had no funds deposited with the drawees, to wit, Messrs. Campbell & Strong. That the laws of the State of Louisiana allow interest to be demanded and received, at the rate of five per cent. per annum, on demands of the character sued upon.

SELMAN & HUBBARD,
Attys. for Plffs.

Endorsed: L. M. Wiley & Co. v. Taylor Brown. 121. Amended petition. Filed April 4, 1856. Wm. Davenport, clerk.

Answer.—Filed April 8, 1856.

L. M. Wiley & Co.
vs.
Taylor Brown.

In the district court of the United States holding sessions at Tyler, April term, A. D. 1856.

And the defendants, for further plea and answer, comes and defends the wrong and injury complained of by said plaintiffs, and says that they, the said plaintiffs, ought not to have or maintain their aforesaid action against him, because he says that the said plaintiffs violated their said contract or agreement with this defendant, in this, that the said plaintiffs, by their legal agent, Charles Keith, and the agent of the said defendant, William L. McMurray, together agreed, 1st, that he, the said Brown, by his agent aforesaid, would draw two drafts upon the house of Messrs. Campbell & Strong, merchants of the city of New Orleans, and State of Louisiana; one of said drafts for about the sum of twenty-two hundred and fifty dollars, bearing date March 23, 1854, payable on or about the 15th day of May, 1854; and the other draft, for the sum of twenty-three hundred and fifty dollars and twenty-six cents, dated 23d day of March, A. D. 1854, and payable on the first day of May, A. D. 1855, which draft aforesaid is the draft pretended to be sued upon by the said plaintiffs, and which drafts above mentioned as aforesaid were drawn by defendant's agent as aforesaid, in consideration and with the express understanding and agreement, (made at the time with the plaintiffs through their agent, Charles Keith, when said drafts were drawn and delivered by this defendant,) that the said Keith, agent of plaintiffs aforesaid, would not present the draft, now pretended to be sued upon by said plaintiffs, to the said Campbell & Strong, merchants as aforesaid, for acceptance, until the first draft, payable in May, A. D. 1854, had been provided for or paid off by said defendant placing in the hands of the said Campbell & Strong funds to pay the same; which agreement the said plaintiffs, through their agent as aforesaid, was the main consideration for this defendant giving said drafts to said plaintiffs as aforesaid; and that the first draft, due May, 1854, was to be provided for by defendant, as agreed upon by said agents as aforesaid, on or before the first day of May, A. D. 1855, the time of the falling due of the second draft; and that the said Campbell & Strong agreed, before and at the time of the drawing of the said drafts aforesaid, with the said plaintiffs, through their agent, Keith, aforesaid, and this defendant, through his agent aforesaid, that they would accept for defendant, under said agreement, and did not

require said defendant to place in their hands any funds to meet said draft aforesaid, only according to the agreement heretofore and hereinafter mentioned and stated between said plaintiffs, this defendant, and said Campbell & Strong; and that they, Campbell & Strong, as a part of said agreement made at the time (with the said plaintiffs, by their agent, Keith, and defendant) of the drawing and delivery of the said drafts by defendant to said plaintiffs, would accept the first draft, (payable in May, A. D. 1854;) and they further agreed with said plaintiffs, through their agent aforesaid, and with defendant, at the time said draft now pretended to be sued upon by said plaintiffs was drawn *drawn* and delivered to said plaintiffs, that they would accept it if said plaintiffs would wait until the first draft, which was payable A. D. 1854, in May, was provided for by the defendant; which promise and agreement the said plaintiffs, through their agent aforesaid, consented and agreed to with this defendant, as an inducement to defendant to give said drafts, which he, defendant, gave, with the understanding and agreement aforesaid, made at the time by all of said parties aforesaid, and before said drafts were drawn and delivered to said plaintiffs by defendant, &c.; which contract and agreement heretofore mentioned the said plaintiffs have and did *violated*, by requiring said Campbell & Strong to accept the same long before said draft, due 1854, in May, was provided for, as agreed upon as aforesaid; and that if they had waited until the first draft aforesaid was provided for, under said agreement, the said Campbell & Strong would have *been* accepted the same; and that the draft heretofore mentioned, and due A. D. 1854, in May, was provided for at the time it fell due, and for six months before that time, by said defendant, by placing cotton in the hands of said Campbell & Strong, at their disposal.

And he further says, that the said Campbell & Strong were willing, at the time said draft, due A. D. 1854, in May, was provided for, to accept the draft now pretended to be sued upon by plaintiffs, and has been ready and willing to accept the same, and is still willing, and has ever been willing to do so, since said first draft was provided for, and is still willing, if said plaintiffs will abide by said agreement; and in consequence of said violation of said agreement aforesaid, this defendant prays that he recover judgment for his costs, all that the law gives him from the facts, and he will ever pray, &c.

N. G. BAGLY, *Atty.*

(Endorsed:) 121. L. M. Wiley & Co. vs. Taylor Brown. Filed April 8, 1856. Wm. Davenport, clerk.

Amended answer.—Filed April 8, 1856.

L. M. WILEY & Co.
v.
TAYLOR BROWN.

The defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, &c., and says that the plaintiffs ought not to have and maintain their aforesaid action against him, because he says that at the time the aforesaid draft was drawn, it expressly stipulated and agreed between the parties that the same was not to be presented for acceptance until after a certain other draft falling due in May, 1854, was provided for, by placing funds in the hands of the drawee by the drawer, in pursuance of an agreement had between the drawee, this defendant, and the drawees, which said last agreement was well known to the party plaintiffs. But for said agreement the said draft would never have been drawn; and this defendant avers that ample provision was made by the month of July, 1854, and that if said draft had been presented at any time after July, 1854, the same would have been accepted; all of which this defendant is ready to verify; wherefore he prays judgment for his costs and damages.

BAGLY, *Deft. Atty.*

(Endorsed:) L. M. Wiley & Co. v. Taylor Brown. 121. Filed April 8, 1856. Wm. Davenport, clerk.

Amended petition.—Filed April 9, 1856.

L. M. WILEY & Co.
vs.
TAYLOR BROWN.

In the United States district court for the district of Texas.

And now comes the plaintiffs, leave of court having been obtained, and amend their original petition, and say that the draft described in said original petition was due on the first day of May, eighteen hundred and fifty-five, instead of the first day of May, eighteen hundred and fifty-four, as alleged by mistake in the said original petition.

Plaintiffs further charge, by way of amendment, that at the time said draft, described in said original petition, was presented for acceptance, and protested for non-acceptance, the drawees, Messrs. Campbell & Strong, had no agreement or contract with the defendant (Taylor Brown) that said draft should be accepted.

SELMAN & HUBBARD,
For Plffs.

Endorsed: 121. L. M. Wiley & Co. v. Taylor Brown. Amended petition. Filed April 9, 1856. Wm. Davenport, clerk.

Exceptions to defendant's answer.—Filed April 9, 1856.

L. M. Wiley & Co.
v.
Taylor Brown.

Pending in the United States district court, at Tyler, 1856.

1st. And now come plaintiffs, and except generally to the sufficiency of defendant's answers, because the same set up no defence in law.

2d. They except generally and specially that part or parts of defendant's answer or answers, in which they pretend to set up any agreement or contract outside of the draft sued upon, because the same presents no legal defence, and in manner and form as stated, is insufficient in law, and is void for uncertainty as alleged by them, and inconsistent with the written contract.

3d. And specially they except to all that part or parts of defendant's answer or answers, 1st, because he does not aver that said agreement was made upon any sufficient consideration, or any consideration at all; 2d, because he does not aver that said agreement or contract was put in writing; 3d, because no agreement between Brown and Campbell & Strong can affect the rights of plaintiffs; and 4th, because they attempt to set up a verbal contract to change the terms, tenor, and effect of the written contract.

SELMAN & HUBBARD,
For Plffs.

(Endorsed:) No. 121. L. M. Wiley & Co. v. Taylor Brown. Exceptions to defendant's answer. Filed April 9, 1856. Wm. Davenport, clerk.

Affidavit for continuance.—Filed April 9, 1856.

L. M. Wiley & Co.
v.
Taylor Brown.

In the district court of the United States, holding session at Tyler.

The defendant's attorney comes and makes oath that he cannot go to trial safely, for the reason that the *defendant* has filed two amended petitions since the last term of this honorable court, which makes it necessary to change the defence, or to get further testimony, and that it has taken him by surprise the amendment coming

in at the trial, and that defendant is not in attendance on the court, and affiant does not know what witness he may desire, and that defendant was advised by affiant that he need not come up, which advice he gave in view of the petition as originally filed, &c.

N. G. BAGLY.

Sworn to and subscribed this April 9, 1856.

WM. DAVENPORT, *Clk.*

Endorsed: L. M. Wiley & Co. v. Taylor Brown. Affidavit. Filed April 9, 1856. Wm. Davenport, clerk.

Protest of draft.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this tenth day of June, in the year one thousand eight hundred and fifty-four, at the request of Messrs. L. M. Wiley & Co., holders of the original draft, whereof a true copy is on the reverse hereof written, I, Theodore Guyal, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, W. G. Latham, presented the said draft to Messrs. Campbell & Strong, the drawees, and demanded acceptance thereof, and was answered by Mr. Campbell, that they would not accept the same, the previous drafts accepted by them for the same parties not being yet paid.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of acceptance of the said draft. Thus done and protested in the presence of W. G. Latham and Paul Abat, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of [L. S.] New Orleans, on the day and year first above written.

THEO. GUYAL,
Notary Public.

Copy draft.

SHREVEPORT, *March* 23, 1854.

Dollars 2,359 $\frac{26}{100}$.

On or before the first day of May next, 1855, please pay to order L. M. Wiley & Co. twenty-three hundred and fifty-nine $\frac{26}{100}$ dollars

for value received, and charge same to my account without further advice.

TAYLOR & BROWN.
By W. L. McMURRAY.

To Messrs. CAMPBELL & STRONG,
Merchants, New Orleans.

(Endorsement on protest:) 10 June, 1854. Protest. Taylor Brown's dft. on Campbell & Strong to L. M. Wiley & Co. Am't $2,359 26; fees $2 50. Filed April 9, 1856. Wm. Davenport, clerk.

Minute Entry.—April 9, 1856.

LEROY M. WILEY & CO.
vs.
TAYLOR BROWN.

And come the parties, by their attorneys, and upon defendant's motion for a continuance, and the same being seen and considered, it is ordered that the said motion be overruled.

And the said cause coming on to be heard upon plaintiffs' demurrer to defendant's special pleas for the reasons therein specified, and the same being seen and considered, it is considered by the court that the said special pleas of defendant be stricken out.

And the said cause coming on to trial upon the issue joined, whereupon came came a jury of good and lawful men, to wit: H. H. Edwards, and eleven others, who being duly empanneled and sworn, after hearing a part of the evidence of the parties, were allowed to disperse until to-morrow morning, ten o'clock, with injunction not to converse, &c.

Final Judgment.—April 10, 1856.

LEROY M. WILEY & CO.
vs.
TAYLOR BROWN.

And the cause coming on for trial, and the said jury having reassembled, and hearing the evidence of the parties, and the charge of the court, retired from the bar of the court to consider of their verdict.

And afterwards, came the said jury, and through their foreman returned the following verdict, to wit:

We, the jury, find for the plaintiff the sum of $2,578 $\frac{02}{100}$ dollars.

H. H. EDWARDS,
Foreman.

It is therefore considered by the court, that the plaintiffs, Leroy M. Wiley, Hugh R. Banks, William G. Lane, Henry Van Derzee, and Edward H. Lane, partners under the name and style of Leroy M. Wiley & Co., do have and recover of the defendant, Taylor Brown, the sum of two thousand five hundred and seventy-eight dollars and two cents, together with all costs of suit in this behalf expended, for which execution may issue, &c.

Bill of Exceptions.—Filed April 18, 1856.

L. M. WILEY & Co.
vs.
TAYLOR BROWN.

United States district court at Tyler. April term, A. D. 1856.

Be it remembered that on the trial of this case, the plaintiff's counsel, to maintain the issue on his part, offered the following draft in evidence, [vide page 40,] afterwards offered in evidence the following protest, [vide page 39,] which was objected to by defendant's counsel, because said draft showed upon its face that it was presented for acceptance by one purporting to be a deputy notary. The objection was overruled by the court; to which ruling and decision of the court the defendant excepted. The plaintiffs then offered in evidence the depositions of Theodore Guyal, which were in the following words and figures, [vide pages 15 and 16,] which was also objected to by defendant's counsel, because the depositions disclosed also that the presentation for acceptance was made by a deputy notary, which objection was overruled; to which ruling and decision of the court the defendant excepts; and here the plaintiff closed.

The defendant's counsel then offered to prove, that at the time the draft was delivered, it was expressly stipulated and agreed by and between W. L. McMurray, the agent of the defendant, and Charles Keith, the agent of the plaintiffs, that the said draft should not be presented for acceptance until the defendant should provide for the payment of a previous draft, drawn by the same party, in favor of the same parties, upon the same drawees, falling due in April, 1854, according to an understanding had with the drawees; and that said draft would not have been delivered to plaintiff's agent if he had not have agreed to hold it up. This was objected to by plffs' counsel and the objection sustained; to which ruling and decision of the court the defendant excepts.

The defendant then offered the depositions of Paschal N. Strong, [vide pages 17, 18, and 19.] Also offered in evidence the depositions of Edwin Campbell, [vide page 23,] and then closed, and which was all the evidence in the case; and the defendant's counsel asked the court to charge the jury, that if they believed from the

testimony that the draft was presented at any time before the tenth day of June, A. D. 1854, and no notice given of said presentation, they must find for the defendants. This charge was refused, and the court then gave the following charge: That a non-acceptance was not necessarily a refusal; that the plaintiffs had a right to present the draft at any time, and as often as they pleased, up to its maturity; and was not bound to give notice until an acceptance was expressly refused; that the plaintiffs had a right to withdraw the presentation without consulting the drawers. The court *court* charged the jury that the bill might have presented for acceptance to the drawee, and he might have said, I am informed that cotton has been shipped, and is now upon the river, against which the bill has been drawn; if that cotton arrives I wish to accept the bill; if it does not arrive, I shall not. Please withdraw the application until it is ascertained whether the cotton will come to hand or not. The bill might be properly withdrawn, and application for acceptance renewed, and the application refused by the drawee; then, when the acceptance of the bill was refused, or a conditional acceptance made, then it would become the duty of the holder to have the bill protested for non-acceptance, and give notice thereof to the drawer; the notice should be sent by the mail, first leaving the place where the transaction was had, (if sent by mail at all,) and directed to the post office where the drawer is proved to be in the habit of receiving his letters. To which refusal of the court to instruct the jury, as prayed by defendant, by his counsel, and to the instructions so given by the court to the jury, the defendant, by his counsel, *by his counsel*, excepts. And, inasmuch as the several matters hereinbefore set forth and contained, do not appear of record in said cause, the defendant, by his counsel, presents this his bill of exceptions, and prays that it may be signed, sealed, and made part of the record in said cause, in due form of law. And it is done accordingly.

JOHN C. WATROUS.

(Endorsed:) 121. L. M. Wiley & Co. vs. Taylor Brown. Bill of exceptions. Filed in the district court of United States for district of Texas, April 18, 1856. Wm. Davenport, clerk.

Bond for writ of error.—Filed April 18, 1856.

SUPREME COURT OF THE UNITED STATES.

L. M. WILEY & Co.
v.
TAYLOR BROWN.

Know all men by these presents, that we, Taylor Brown, and James A. S. Parsons, and R. B. Tult are held and firmly bound

unto Leroy M. Wiley, Hugh R. Banks, William G. Lane, and Van Derzee, and Edward H. Lane, merchants trading under firm, name, and style of L. M. Wiley & Co., in the sum of five thousand one hundred and fifty-six dollars and four cents, to be paid to the said Leroy M. Wiley, Hugh R. Banks, William G. Lane, Van Derzee, and Edward H. Lane, their executors and administrators; to which payments, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated April 14, 1856. Whereas the above-named Taylor Brown hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the United States district court for the district of Texas: Now, therefore, the condition of this obligation is such, that if the above-named Taylor Brown shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

TAYLOR BROWN, [L. S.]
JAMES A. S. PARSONS, [L. S.]
R. B. TULT, [L. S.]

Sealed and delivered in presence of—
W. L. McMURRAY,
N. G. BAGLEY.

Approved April 18, 1856.

JOHN C. WATROUS.

(Endorsed:) 121. L. M. Wiley & Co. vs. Taylor Brown. Bond for writ of error. Filed in the district court of the United States for District of Texas. April 18, 1856. Wm. Davenport, clerk.

Citation.—Filed April 18, 1856.

UNITED STATES OF AMERICA.

To Leroy M. Wiley, Hugh R. Banks, William G. Lane, Henry Van Derzee, and Edward H. Lane, merchants trading under the name and style of L. M. Wiley & Co.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Texas, wherein Taylor Brown is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be cor-

rected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this the eighteenth day of April, in the year of our Lord one thousand eight hundred and fifty-six. [L. S.]

JOHN C. WATROUS,
Judge Dist. Ct. U. S., Dist. of Texas.

(Endorsed:) Taylor Brown v. L. M. Wiley & Co. Citation. Filed in the clerk's office of United States for district of Texas. April 18, 1856. Wm. Davenport, clk.

Writ of error.—Filed April 18, 1856.

UNITED STATES OF AMERICA.

The President of the United States of America to the judge of the district court of the United States for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court before you, between L. M. Wiley & Co. and Taylor Brown, a manifest error hath happened, to the great damage of the said Taylor Brown, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you can have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this the eighteenth day of April, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the seventy-ninth. [L. S.]

WM. DAVENPORT,
Clerk of the United States District Court, at Tyler.

Allowed by

JOHN C. WATROUS,
Judge Dist. Ct. U. S. for Dist. of Texas.

Endorsement on writ of error: Taylor Brown vs. L. M. Wiley & Co. Writ of error. Filed April 18, 1856. Wm. Davenport, clerk. Goodman & Earl, L. A. Thompson, attys.

UNITED STATES OF AMERICA,
U. S. District Court for the District of Texas, sitting at Tyler.

I, William Davenport, clerk of the United States district court for the district of Texas, at Tyler, do hereby certify that the foregoing 51 pages contain a true copy of the proceedings of said court in the case of Leroy M. Wiley & Co. vs. Taylor Brown, (No. 121,) as the same appear of record in my office.

Witness my hand and seal of office, at Tyler, this 10th day of November, A. D. 1856.

[SEAL.]

WM. DAVENPORT, *Clerk.*